

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JEFFERY E. WALKER,)
Plaintiff(s),) No. C 08-0802 CRB (PR)
vs.) ORDER OF DISMISSAL WITH
JOHN DOE, et al.,) LEAVE TO AMEND
Defendant(s).)

Plaintiff, a prisoner at the California Medical Facility in Vacaville, has filed a pro se complaint for damages under 42 U.S.C. § 1983 alleging that on December 18, 2005, while he was at the San Francisco County Jail, two correctional officers slammed him against a window, hit him in the face and body, forcibly dragged him to his cell and called him derogatory names. Plaintiff only names Doe defendants.

DISCUSSION

A. Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must identify cognizable

1 claims or dismiss the complaint, or any portion of the complaint, if the complaint
2 "is frivolous, malicious, or fails to state a claim upon which relief may be
3 granted," or "seeks monetary relief from a defendant who is immune from such
4 relief." Id. § 1915A(b). Pro se pleadings must be liberally construed, however.
5 Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

6 To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two
7 elements: (1) that a right secured by the Constitution or laws of the United States
8 was violated, and (2) that the alleged violation was committed by a person acting
9 under the color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).

10 B. Legal Claims

11 Although regrettable, plaintiff's allegations that correctional officers called
12 him derogatory names is not enough to implicate the Eighth Amendment. See
13 Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987) (directing vulgar
14 language at prisoner does not state constitutional claim). But plaintiff's
15 allegations of use of excessive force may well state a claim for damages under §
16 1983. See Hudson v. McMillian, 503 U.S. 1, 6-7 (1992) (use of force
17 maliciously and sadistically to cause harm violates 8th Amendment's proscription
18 against cruel and unusual punishment). In order to proceed, however, plaintiff
19 must identify the Doe defendants, and amend his complaint to name them and set
20 forth specific facts showing how each individual defendant violated his rights.
21 See Wakefield v. Thompson, 177 F.3d 1160, 1163 (9th Cir. 1999). Plaintiff will
22 be afforded 30 days from the date of this order to identify the unknown Doe
23 defendants and amend his complaint.

24 **CONCLUSION**

25 For the foregoing reasons, the complaint is dismissed with leave to amend,
26 as indicated above, within 30 days of this order. The pleading must be simple
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1 and concise and must include the caption and civil case number used in this order
2 and the words FIRST AMENDED COMPLAINT on the first page. Failure to
3 file a proper amended complaint within the designated time will result in the
4 dismissal of this action.

5 Plaintiff is advised that the amended complaint will supersede the original
6 complaint and all other pleadings. Claims and defendants not included in the
7 amended complaint will not be considered by the court. See King v. Atiyeh, 814
8 F.2d 565, 567 (9th Cir. 1987).

9 SO ORDERED.

10 DATED: March 14, 2008



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CHARLES R. BREYER
United States District Judge